IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

CRP.No. 279 of 2004()

AGAINST THE ORDER DT. 23.01.04 IN EP NO.608/02 IN OS 189/2000
OF MUNSIFF COURT, ENAKULAM

REVN. PETITIONER/JUDGMENT DEBTOR:

T.R.ANTONY, AGED 56 YEARS,
THIRUVIPARAMBIL VEETTIL, VADUTHALA,
KOCHI CORPORATION, WARD NO.46, ERNAKULAM.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENT/DECREE HOLDER:

V.O.JACOB, S/O. OOMMEN,
AGED 57 YEARS, VALUTHADATHIL, OTHARA MURI,
ERAVIPEROOR VILLAGE, THIRUVALLA TALUK.

BY ADV. SRI.N.ASHOK KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP NO. 279 OF 2004

ORDER ON IA NO.791 OF 2004 IN CRP NO. 279 OF 2004

DISMISSED

17.08.2007 SD/- PIUS C. KURIAKOSE, JUDGE

PIUS C. KURIAKOSE, J.

C.R.P. No. 279 OF 2004

Dated this the 17th day of August, 2007

O R D E R

An adjournment is sought for on behalf of Sri.A.T.Anilkumar, counsel for the petitioner. But, having gone through the impugned order I did not become inclined to grant adjournment and I called upon the junior attached to Mr.Anilkumar, who obliged me and made submissions on the basis of the various grounds. I have also heard the submissions of the respondent.

2. Under the impugned order, the learned Munsiff has found that the petitioner is having sufficient means to pay the decree debt in a lump or a substantial portion thereof and is willfully neglecting to make payment. On that basis, the court below ordered warrant for his arrest. The above order is passed by the learned Munsiff on the basis of an enquiry which was conducted under Rule 40 of Order XXI CPC. In the objection filed by the petitioner the contention was only that the petitioner is not having sufficient means. But at the time of evidence the petitioner also deposed that he is having ever so many health problems. The learned Munsiff noticed that the evidence that judgment debtor is having health problems, is not founded on the objections. Learned Munsiff also noticed that the petitioner is an able bodied man looking

physically fit. The learned Munsiff further noticed that it was the petitioner's own version before the trial court that he is a carpenter by avocation and that he is having considerable work as a furniture maker.

3. This court has in **Kuppuswamy v. P.G. Menon** [**1992 (2) KLT 203**] held that the burden cast on the decree holder to prove that the judgment debtor is having sufficient means is one which can be discharged by adducing formal evidence. This is a case where both sides adduced evidence and the learned Munsiff passed arrest warrant on coming to the conclusion that the version of the decree holder is more inspiring. I am not able to say that the impugned order is vitiated by any judicial infirmity warranting correction under the revisional jurisdiction of this Court. Before me also the ground which was highlighted by the learned counsel for the petitioner was the ailments which are haunting the petitioner. The ground of health may be a justification for releasing a person who has been ordered to be arrested. Enquiry as to whether a person is healthy enough to undergo prison life will be considered by the execution court at the time when the person is being committed. I repel the challenge against the impugned order and dismiss the Civil Revision Petition.

However, I direct that the impugned order will not be implemented on condition that the petitioner pays every month commencing from the

15th of September 2007 at the rate of Rs.3,500/- per mensum. This will be subject to the further condition that in the event of any two defaults, he will forfeit the above benefit under which case the impugned order will become operative.

PIUS C. KURIAKOSE, JUDGE

btt